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09/997,046	11/28/2001	Bronson B. Kim	KB0-2936-U	3495

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EXAMINER

LAUX, JESSICA L

ART UNIT

PAPER NUMBER

3635

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Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/997,046	<b>Applicant(s)</b> KIM ET AL.	
	<b>Examiner</b> Jessica Laux	<b>Art Unit</b> 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 28 November 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 9-11 and 21 is/are rejected.
- 7) ☒ Claim(s) 7, 8 and 12-20 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 November 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Objections***

Claims 7, 8, 11-17 and 21 are objected to because of the following informalities:

Claim 7 – line 4 recites “diameter, extending” examiner suggests changing to “diameter; extending” for clarification, otherwise it is unclear whether the diameter is extending or the u-shaped fastener securing portions are extending.

Claim 8 – line 1 recites the limitation “said reversible keyhole”; line 3 recites the limitation “said central aperture”. There is lack of antecedent basis for these limitations in the claim.

Claim 11 – page 12, line 21 and page 13 line 11 recite “fist”, change to “first”

Claim 21 – it is unclear what is meant by “located as one...points an external”.

Claims 12-17 – the preamble recites “the apparatus”, however there is no claim from which these claims depend having a preamble reciting such a limitation.

Appropriate correction is required.

### ***Specification***

The disclosure is objected to because of the following informalities: page 5 lines 10 and 11 recite the limitations “third end 24<sub>E3</sub>” and “fourth end 24<sub>E4</sub>”, respectively.

Change “24” to “26”.

Appropriate correction is required.

***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the intermediate and termination lands of claim 11 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 11 and depending claims 12-14 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim recites the limitation of an intermediate land, however this feature is not described in the specification or in the drawings in such a way as to clearly define the structure and location of the feature. The claim also recites the limitation of a termination land, and the specification and drawings do not clearly disclose what a termination land is or where on the structure it is or the claimed relationship to the inflection point and a fifth and sixth end. Appropriate clarification is needed.

***Claim Rejections - 35 USC § 102***

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 9-11 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Kemp (4704828).

Regarding claim 1: Kemp discloses a window well structure, said structure comprising:

(a) a lower rim (best depicted in Figure 2, the top element 10), said lower rim comprising a shaped frame member having a first end (at the vertical flange) and a second end (at the other vertical flange);

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(b) an upper rim (best depicted in Figure 2, the bottom element 10), said upper rim comprising a shaped frame member having a third end (directly above the lower rim first end and at the vertical flange) and a fourth end (directly above the lower rim second end and at the vertical flange);

(c) a corrugated body (10) extending between said lower rim and said upper rim (Figure 1); said corrugated body forming a generally vertical structural wall between said lower rim and said upper rim, said corrugated body having a plurality of corrugations with an inward inflection point (the point where corrugation, 12, starts to inwardly deflect; Figure 1) between adjacent corrugations, said corrugated body having an external surface, said external surface further comprising one or more groove cutouts (the inward most point of the corrugation, 12, depicted with circular apertures; Figure 1) defined between first and second edges.

Regarding claim 2: The window well structure as set forth in claim 1, further comprising:

(a) a first flange (14) running vertically between said first and said third ends, and

(b) a second flange (14) running vertically between said second and said fourth ends

(c) said first flange and said second flange each integrally formed with said corrugated body. It should be noted that the limitation "integrally formed" is considered a product-by-process claim. The patentability of the

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product does not depend on its method of production. Determination of patentability is based on the product itself. See MPEP 2113. If the product-by-process claim is the same as or obvious from a product of the same prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed.Cir.1985). In the instant case Kemp discloses the claimed invention having a flange that is attached to the corrugated body, therefore the claim limitations are anticipated by the prior art.

Regarding claim 3: The window well structure as set forth in claim 2, wherein said corrugated body has an outer surface oriented along a vertical plane, and wherein said first flange and said second flange each have a flange face, and wherein said flange face is oriented on a plane perpendicular to said vertical plane of said corrugated body (Figure 1).

Regarding claim 4: The window well structure as set forth in claim 3, wherein each of said first and said second flanges has an outward edge end, and wherein said outward edge end of said first and said second flange also defines first and second ends of said corrugated body (Figure 1).

Regarding claims 5 and 6: The window well structure as set forth in claim 1, wherein said upper and lower rims are provided in a flat, u-shaped configuration (Figure 1; Col. 2, lines 43-44).

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Regarding claims 9 and 10: The window well structure as set forth in claim 2, wherein said first and second flange further comprise at least one nail socket (16), said at least one nail socket adapted to secure a nail therein.

Regarding claim 21: The window well structure as set forth in claim 1, wherein a groove (the inward most portion of the corrugation 12) is located as one or more of said inward inflection points on an external surface of said corrugations.

Regarding claim 11: A window well structure, said structure comprising:

(a) a first window well portion (Figure 1 the bottom element 10), said first window well portion comprising:

(1) a lower rim (best depicted in Figure 2, the top element 10), said lower rim comprising a flat, u-shaped frame member having a first end and a second end;

(2) an upper rim (best depicted in Figure 2, the bottom element 10), said upper rim comprising a flat, u-shaped frame member having a third end and a fourth end;

(3) a corrugated body (Figure 1, 10) extending between said lower rim and said upper rim; said corrugated body forming a generally vertical structural wall between said lower rim and said upper rim, said corrugated body having a plurality of corrugations with an inward inflection point (the point where corrugation, 12, starts to inwardly deflect; Figure 1) between adjacent corrugations, said corrugated body having located at one or more of said inward inflection points an external surface further comprising a



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groove (the inward most point of the corrugation, 12) defined by first and second edges, said groove having therein an intermediate land which is substantially flat (the flat part of the groove).

(4) a first flange (14) running vertically between said first and said third ends, and

(5) a second flange (14) running vertically between said second and said fourth ends

(6) said first flange and said second flange each integrally formed with said corrugated body; it should be noted that the limitation "integrally formed" is considered a product-by-process claim. The patentability of the product does not depend on its method of production. Determination of patentability is based on the product itself. See MPEP 2113. If the product-by-process claim is the same as or obvious from a product of the same prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed.Cir.1985). In the instant case Kemp discloses the claimed invention having a flange that is attached to the corrugated body, therefore the claim limitations are anticipated by the prior art, and

(b) a second window well structure portion (Figure 1, the top element 10), said second window well structure portion comprising:

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- (1) a lower rim (best depicted in Figure 2, the top element 10), said lower rim comprising a flat, u-shaped frame member having a first end and a second end (Figure 1);
- (2) a corrugated body (12), said corrugated body having a plurality of corrugations with an inward inflection point (the point where corrugation, 12, starts to inwardly deflect; Figure 1) between adjacent corrugations, said corrugated body having located at one or more of said inward inflection points an external surface further comprising a groove (the inward most point of the corrugation, 12) defined by first and second edges, said groove having therein an intermediate land which is substantially flat (the flat part of the groove), said corrugated body extending upward from said lower rim to a termination land, said termination land occurring at said inflection point between adjacent corrugations, said termination land having a fifth end and a sixth end, said corrugated body forming a generally vertical structural wall between said lower rim and termination land, said upper rim (Figures 1 and 2)
- (3) a first flange (14) running vertically between said first and said fifth ends, and
- (4) a second flange (14) running vertically between said second and said sixth ends
- (5) said first flange and said second flange each integrally formed with said corrugated body; it should be noted that the limitation "integrally

formed" is considered a product-by-process claim. The patentability of the product does not depend on its method of production. Determination of patentability is based on the product itself. See MPEP 2113. If the product-by-process claim is the same as or obvious from a product of the same prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed.Cir.1985). In the instant case Kemp discloses the claimed invention having a flange that is attached to the corrugated body, therefore the claim limitations are anticipated by the prior art.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kemp (4704828).

Regarding claim 18: The window well structure as set forth in claim 1, wherein the overall height is approximately twenty-four inches. Kemp does not expressly disclose that the height of the window well is 24 inches, however Kemp does disclose a height such as 18 inches (Col. 2, lines 50-52). At the time the invention was made it would have been obvious to one of ordinary skill in the art to modify the height of Kemp

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to be 24 inches as applicant has not disclosed that the claimed height is for a particular purpose or solves a stated problem. Furthermore one would expect the height of Kemp to perform equally well as the claimed 24 inches considering the usual height of a window well and that both applicant's and Kemp's window wells are stackable.

Therefore it would be prima facie obvious to modify the height of Kemp to be the claimed 24 inches as it is considered a mere design choice that fails to patentably distinguish over the prior art.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kemp (4704828) in view of Poole (6484455).

Regarding claim 16: Kemp discloses the apparatus as set forth in claim 1 above, but does not disclose the window well structure comprises an injection moldable plastic, instead Kemp discloses that the window well is sheet metal. Poole discloses a window well manufacture, as one piece, of a rigid plastic because plastic is lighter and easier to manufacture as one-piece constructions as well as being a good material for color and texture designs. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the structure of Kemp to be of plastic as taught by Poole.

#### ***Allowable Subject Matter***

Claims 7-8, 15, and 19-20 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Claims 12-14 and 17 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: Claims 7 and 8, and depending, contain allowable subject matter as the prior art fails to teach or suggest a passageway that has a central aperture with a first and second u-shaped fastener securing portion extending above and below where the passage way is a mirror image about the center of the central aperture. Claims 12 -14, and depending, are contain allowable subject matter because the prior art fails to teach or suggest an upper and lower rim with apertures for connecting an upper and lower window well structure. Claim 15 contains allowable subject matter because the prior art fails to teach or suggest flanges that are turned inward.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica Laux whose telephone number is 571-272-8228. The examiner can normally be reached on Monday thru Friday, 8:30am to 4:00pm (est).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Naoko Slack can be reached on 571-272-6848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.


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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



JL

08/29/2006

  
N. Slack  
SPE